



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Eastern Express, Inc.,

File: B-235118

Date: February 2, 1990

DIGEST

When applicable rate publication specifically applies a minimum charge to shipments of less than 10,000 pounds that occupy a truck's full visible capacity but is silent with respect to similar shipments of 10,000 pounds or more, there is no basis to conclude that there is any minimum charge on shipments of more than 10,000 pounds.

DECISION

Eastern Express, Inc. (formerly Sawyer Eastern, Inc.) and Rainbow Transport, Inc., request that our Office review numerous transportation settlement actions taken by the General Services Administration (GSA).^{1/} The carriers contend that GSA incorrectly computed charges applicable to shipments weighing more than 10,000 pounds which required the use of an entire vehicle that otherwise could have transported additional items. We sustain GSA's actions.

BACKGROUND

Shipment charges in this case are based on 49 U.S.C. § 10721, under which a common carrier can provide its transportation services to the government at a reduced rate.^{2/} See Jetco, Inc. v. U.S., 11 Cl. Ct. 837, 845

1/ Eastern Express itemizes 131 Government Bill of Lading (GBL) transactions totaling \$30,836.23 and Rainbow Transport itemizes 30 GBL's totaling \$4,656.51, in which they dispute GSA's audit actions on the issue involved herein.

2/Traditionally, these reduced rates have been offered by the carrier in a so-called section 22 tender (named after a former codification of the United States Code, 49 U.S.C. § 22).

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(1987). Military Traffic Management Command (MTMC) Freight Traffic Rules Publication (MFTRP) No. 1-A provides the rules for computing charges for these Department of Defense shipments, and carriers offer services under the MFTRP at minimum weights and associated rates provided in their individual tenders. The combination of the two publications yields applicable charges under 49 U.S.C. § 10721.

A carrier's truck often will have a capacity of 40,000 to 45,000 pounds. The carrier's tender generally will include a series of decreasing rates based on cents per hundredweight for progressively heavier shipments, so that one specified rate might apply to a shipment with a minimum weight of 9,000 pounds, a lower rate to a shipment with a minimum weight of 20,000 pounds, yet a lower rate to a shipment with a minimum of 30,000 pounds, etc.

The carrier's expectation is that it will add other customers' shipments to any government shipment of less than the truck's capacity to take full advantage of the vehicle and thereby get full compensation for the transport. That is not possible, however, if the government's shipment by its shape or nature occupies the truck's entire loading space or otherwise requires the entire vehicle. Such a "full visible capacity load" (also termed a "capacity load") precludes the carrier from accepting any more cargo even if the truck can hold substantially more weight.

Item 70 of the 1987 version of MFTRP 1-A, which applied at the time of the shipments in issue,^{3/} provides a special rule for full visible capacity loads of less than 10,000 pounds. The rule provides that the charge for such shipments will be computed at the rate set out in the carrier's tender for the lowest minimum weight over 10,000 pounds. This means that if, for example, a tender specifies rates for 9,000 pound, 20,000 pound, and 30,000 pound minimum weight shipments, the charge for a 9,000 pound shipment that does not occupy the entire truck would be computed at the 9,000 pound rate, whereas the charge for a shipment of that same weight that does occupy the entire

^{3/} Unless otherwise indicated, all references to MFTRP 1-A in this decision are to the 1987 version.

truck would be computed as if 20,000 pounds, the lowest minimum weight over 10,000 pounds, were being shipped.4/

This case involves the proper use of MFTRP 1-A to determine the rates and charges applicable to shipments of 10,000 pounds or more that occupy the full visible capacity of the vehicle. Because these shipments are 10,000 pounds or more, item 70 in MFTRP 1-A is inapplicable. There is no express exception for such shipments in MFTRP 1-A to the normal method of calculating shipment charges, and GSA therefore computed charges for full visible capacity shipments of 10,000 pounds or more in the same manner that it calculates charges for other shipments.5/

The carriers argue that the charge for a full visible capacity shipment of 10,000 pounds or more should be the highest minimum weight charge in the tender, since the carrier cannot use the truck's full capacity by securing other customers. This would mean, for example, that a full visible capacity shipment of 20,000 pounds would cost the government the same as a 40,000 or 45,000 pound shipment even though the carrier's tender may specify a rate for a 20,000 pound minimum weight shipment. The carriers argue that to charge otherwise ignores industry practice and leads to absurd results in terms of the revenue required to compensate the carriers for their costs. The government is the author of MFTRP No. 1-A, reason the carriers, and the argued approach should be adopted in view of the government's failure to address the situation. The carriers maintain that they at least should be compensated for full visible capacity shipments of 10,000 pounds or more on a quantum meruit basis.

In response, both GSA and MTMC maintain that since there is no exception in MFTRP 1-A to the normal charge calculations for full visible capacity shipments of 10,000 pounds or more, the normal calculations necessarily apply. This means that, as happened in the settlements in issue, any

4/ In the example, if the tender only had 9,000 pound and 30,000 pound rates, the charge for a full visible capacity shipment of less than 10,000 pounds would be computed as if the shipment weighed 30,000 pounds.

5/ Charges generally are based on Items 60 and 140 of MFTRP I-A. When a series of rates at corresponding minimum weights are provided in a tender or different tenders, charges are the lower of the rate (considering Item 70) at the actual or authorized estimated weight, or any rate at the respective minimum weight. See Item 140(2).

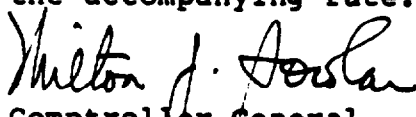
shipment of 10,000 or more pounds is rated the same way irrespective of how much of the truck's visible capacity it occupies.

We agree with GSA and MTMC. Generally, interpretation of tariffs or tenders involves ordinary rules of contract interpretation. See Southern Pacific Transportation Co. v. U.S., 596 F.2d 461, 464-465 (Cl.Ct. 1979). As stated above, the rules governing shipments are set out in MFTRP 1-A, and Item 70 is the only provision in the rate publication that addresses minimum charges when a carrier's conveyance is loaded to full visible capacity. That provision is specifically limited to shipments of less than 10,000 pounds, so that full visible capacity shipments of 10,000 pounds or more effectively are excluded, by necessary implication, from any exception to normal rate and charge rules. Trans Country Van Lines, Inc., B-190624, Aug. 29, 1978. Consequently, and although we appreciate the carriers' problem, there simply is nothing in the applicable rules to support their argument about how full visible capacity charges for shipments of 10,000 pounds or more should be computed, so that we see no basis to object to GSA's calculations.

The carriers complain that application of a charge other than the one that would apply as if the conveyance were loaded to a 40,000 or 45,000 pound capacity unfairly will not reimburse the carrier for the cost of transporting the shipment. There is no requirement, however, that the government's payment for a shipment ensure full compensation to the carrier. In fact, a carrier itself might not intend that its tender to the government be compensatory since carriers can agree to transport government property at no charge or at reduced rates under 49 U.S.C. § 10721(b)(1). See Sedalia-Marshall-Boonville Stage Line, Inc., B-206567, Sept. 23, 1983; Ultra Special Express, B-181560, Nov. 19, 1975.

Accordingly, we sustain GSA's settlements.

Notwithstanding our conclusion, we note that item 70 of MFTRP 1-A was revised effective June 1, 1989. According to the provision as revised, the charge for any full visible capacity load will be based on the highest minimum weight in the carrier's tender (or the actual weight, if greater), at the accompanying rate.

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